IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 1666 of 2005

Between:

Preetham Talari, S/o T. Ananth Ram,
R/o Flat No. 103, Amar Apartments, Plot No. 139, Bhagya Nagar Colony,
Kukatpally, Hyderabad.

..... PETITIONER

AND

1 The Vice Chancellor, NTR University of Health Sciences, Vijayawada.
2 The Registrar, NTR University of Health Sciences, Vijayawada.
3 The Principal, Gandhi Medical College, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the action of the Respondents No.1 and 2 in not considering the case of the petitioner and passing the Impugned Order vice proceedings No. EL(c)/04919/04, dated 27-1-2005 as illegal, improper and arbitrary besides violative of Principles of Natural justice and consequently set aside the same and to declare the result of the examination of the petitioner of MBBS Part-II (Final) with Hall Ticket No. 9908077 held in October 2004 pass such other order or orders as this Hon'ble Court deems fit and proper in the circumstances of the case.

Counsel for the Petitioner :SMT. K.SESHARAJYAM

Counsel for the Respondents 1 & 2: SMT.Y.PADMAVATHI

Counsel for the Respondent No.3: G.P. for Medical & Health

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.1666 OF 2005

ORDER:

The petitioner is pursuing MBBS Course in the 3rd respondent College at Hyderabad. Having passed Part-I of Final Year MBBS, he appeared for MBBS Part-II Final Examinations held in October, 2004. On 20-10-2004 while he was writing 2nd Paper of Medicine, the Members of the Flying Squad visited the examination hall and on a random search they found that the petitioner was in possession of a paper with some hand-written material. The Flying Squad seized the said material and booked a case against him for malpractice. However, the petitioner was allowed to write the said paper and also to appear for the other three theory examinations and four practical examinations. Thereafter, the petitioner was served with a Memo dated 27-12-2004 calling upon him to explain as to why his appearance from the examination should not be cancelled and why he should not be debarred from

appearing in any examination and for prosecuting further studies on the ground of misconduct. The petitioner submitted his explanation dated 4-1-2005 stating that while preparing for the examinations he has noted down some important and difficult points on a paper for revising them and accidentally the said paper remained in his pocket along with identity card and some pocket money unnoticedly without his knowledge. He stated that he had no mala fide intention and it was only a genuine and accidental slip and that he was unaware of the presence of the said paper in his pocket. It was also stated that he is a regular and sincere student having good academic record and that the information contained in the paper does not tally with the answers in the answer-sheet and therefore a sympathetic view may be taken and further proceedings may be dropped. However, under the impugned proceedings dated 27-1-1995 passed by the 2nd respondent, the petitioner was informed that he is disqualified from appearing in any University examination for a period of one year including September / October, 2004 examination as punishment for use of unfair means during the examinations. It was also stated in the said proceedings that the petitioner is permitted to appear for the examinations to be conducted in September / October, 2005 subject to acquiring eligibility for the same.

The said order is under challenge in this writ petition contending that the impugned order was passed without application of mind to the explanation offered by the petitioner to the show-cause notice dated 27-12-2004 and particularly since the respondents failed to assign any reasons in support of their decision to impose the punishment of disqualifying for one year, the impugned order is arbitrary and illegal. It is also contended that the respondents ought to have given an opportunity of personal hearing as requested by the petitioner in his explanation so that they would have appreciated the thorough knowledge of the petitioner in academics and the fact that the had a consistent good academic record throughout his career and never indulged in copying or malpractice or unfair means in any examination.

In the counter-affidavit filed on behalf of the 2nd respondent University, it is stated that the Flying Squad consisting of two senior-most Professors visited the examination centre on 1-11-2004 and caught copying material, cell phones etc., from 21 students including the petitioner. It is stated that the squad has found a neat

hand-written slip from the petitioner's pocket and on the same day the petitioner has given in writing that he had a slip in his pocket accidentally. It is stated that in the instructions to the candidates specified on the hall-ticket as well as on the first page of the answer-book, it was clearly mentioned that copying in any form is a very serious offence, carrying severe punishment and not to carry any written or printed matter in any form to the Examination hall. Therefore, the petitioner ought not to have carried any material in any form to the examination hall either intentionally / accidentally. Though the petitioner was found with copying material, with a view to avoid loss of academic year in case he is not found guilty, the petitioner was allowed to write subsequent examinations. However, the same does not exonerate the candidate's guilt if he is found guilty by the Disciplinary Committee. It is further stated that the explanation offered by the petitioner in response to the show-cause notice was placed before the Disciplinary Committee in the meeting held on 17-01-2005. Since there is no provision to allow the candidate to appear in person before the Disciplinary Committee, the petitioner was not heard in person, however the Principal of the Concerned College where the petitioner appeared for the examination attended as a Member of the Disciplinary Committee. The Committee having gone through the material, resolved that the petitioner was guilty of having some papers in his pocket. Since he himself has stated that he had that slip in his pocket accidentally, he was awarded the punishment of disqualification from appearing in the examinations for one year. It is also stated that had the answers tallied with the slip or if the petitioner was caught while copying, the punishment would have been disqualifying for two years, however the petitioner was awarded lesser punishment since he was found guilty of being in possession of written material while writing examinations. Hence, the action of the respondents cannot be said to be either arbitrary or illegal and the interference of this Court is not warranted.

I have heard the learned Counsel for the petitioner as well as the learned Standing Counsel appearing for the 1st respondent and perused the material on record.

Though the learned Counsel for the petitioner reiterated the contentions that the procedure followed by the respondents is in violation of the principles of natural justice since the petitioner was not afforded an opportunity of personal hearing and that the impugned order which lacks any reasons while concluding that the

petitioner is guilty of misconduct is arbitrary and illegal, I am unable to agree. Nothing has been placed before this Court to show that there is any statutory provision or there is any clause under the Standing Orders of the 2nd respondent University which provides for an opportunity of personal hearing to the candidate before the Disciplinary Committee. Admittedly, the charges were clearly communicated to the petitioner and he was afforded an opportunity to explain the same, which was considered by the Disciplinary Committee consisting of Principals of the concerned Colleges apart from the Director of Medial Education and the Registrar of the 2nd respondent University. The hand-written material recovered by the Flying Squad from the pocket of the petitioner, the statement of the petitioner admitting the said fact, as well as the minutes of the meeting of the Disciplinary Committee held on 17-01-2005 have been placed before this Court. So far as the petitioner herein is concerned, the remarks of the Disciplinary Committee are as under :

> *"Found guilty of having some papers in her pocket. The available evidence does not prove that she is actually indulged in copying."*

On the basis of the said finding recorded by the Disciplinary Committee, the second respondent passed the impugned order awarding punishment of disqualification of the petitioner from appearing in any University Examination for a period of one year including September / October, 2004 Examination.

In the light of the material placed before this Court, I am unable to hold that either the Disciplinary Committee or the second respondent failed to apply their mind to the material available before them while passing the impugned proceedings. Admittedly, the petitioner was found to be in possession of hand-written material which is impermissible. In the circumstances, the respondents are not expected to record elaborate reasons in support of their conclusion. Hence, I do not find any substance in the contention of the petitioner that the impugned order was in violation of the principles of natural justice and that the same was passed without application of mind merely on the ground that no reasons were assigned in the impugned order.

However, the learned Counsel for the petitioner vehemently contends that as per Para-1 of the Standing Orders of the 2nd respondent University, a student can be disqualified for a period of one year only where the written material is relevant to the examination and in the case on hand since in the impugned order there was no finding that the written material recovered from the petitioner was relevant to the examination, the impugned order cannot be sustained and liable to be set aside on that ground alone.

It is to be noted that in the counter-affidavit filed by the 2nd respondent, the plea of the petitioner that the written material found from his pocket was not relevant to the examination has been categorically denied and it is stated that the material written on the slip is relevant to the examination. As a matter of fact, the petitioner himself admitted in his explanation dated 4-1-2005 as under :

> *"Further, by the time the Squad came, I had not answered the concerned question and I answered it later after the paper was taken out by the Squad."*

Thus, it is clear that the material that the petitioner was carrying with him was relevant to the examination on that date and the plea of the petitioner is factually incorrect.

At any rate, the law is well settled that the scope of the judicial review vis-a-vis a malpractice case is very limited and where an expert body comes to a conclusion of fact, this Court while exercising the jurisdiction under Article 226 of the Constitution of India will never sit in appeal over such conclusion and substitute its own opinion as long as the enquiry is held to be fair and the candidate was afforded an adequate opportunity to defend himself { vide CENTRAL BOARD OF SECONDARY EDUCATION v. VINEETA MAHAJAN, GURU NANAK DEV UNIVERSITY v. HARJINDER SINGH and UNION PUBLIC SERVICE COMMISSION v. JAGANNATH MISHRA }.

So far as the punishment imposed under the impugned order is concerned, it is relevant to note the para-1 of the Standing Orders of punishment for use of unfair means which runs as under :

> *"During the University examination if a candidate is found in malafide possession of papers, books or notes or written notes on his clothes, body or table or chair, which is relevant to the examination(s) he will be disqualified from appearing in any university exam for one year and if found having copied will be disqualified for two years."*

The above provision shows that the punishment shall be disqualification for two years if the candidate is found to be copying, however if it is found that he is in possession of material as specified in the said clause, the punishment shall be disqualification for one year. In the case on hand, since admittedly the petitioner was found in possession of paper with written material and the Disciplinary Committee recorded a finding that the evidence available does not prove that the petitioner has actually indulged in copying, the second respondent has rightly imposed punishment of disqualification for one year.

In the circumstances, I do not find any substance in any one of the contentions raised by the petitioner and accordingly the Writ Petition is dismissed. No costs.

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07th March, 2005.

gbs

To

1 The Vice Chancellor, NTR University of Health Sciences, Vijayawada.
2 The Registrar, NTR University of Health Sciences, Vijayawada.
3 The Principal, Gandhi Medical College, Hyderabad.

4. 2 CD copies

5 Two C.Cs. to the G.P. for Medical & Health, High Court Buildings, Hyderabad.